

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

MEDPOINTE HEALTHCARE INC., )

Plaintiff, )

vs. )

Civil Action No. 06-164-SLR

APOTEX INC. and APOTEX CORP., )

Defendants. )

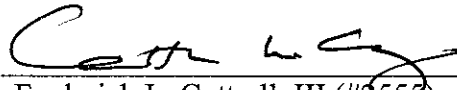
**PLAINTIFF'S MOTION TO STRIKE APOTEX'S JURY DEMAND,  
STRIKE APOTEX'S AFFIRMATIVE DEFENSE OF UNENFORCEABILITY,  
DISMISS APOTEX'S COUNTERCLAIM OF UNENFORCEABILITY, AND  
STRIKE APOTEX'S AFFIRMATIVE DEFENSE OF MISUSE**

Plaintiff MedPointe Healthcare Inc. ("Plaintiff") hereby moves this Court for entry of an Order, pursuant to Federal Rules of Civil Procedure 9(b), 12(b)(6) and 12(f), striking defendants Apotex Inc.'s and Apotex Corp.'s (collectively, "Defendants" or "Apotex") jury demand, striking Defendants' affirmative defense of unenforceability, dismissing Defendants' counterclaim of unenforceability, and striking Defendants' affirmative defense of misuse. The grounds upon which Plaintiff makes this motion are set forth in Plaintiff's Opening Brief in support of this motion, filed of even date herewith.

A proposed form of Order is attached hereto.

*Of Counsel:*

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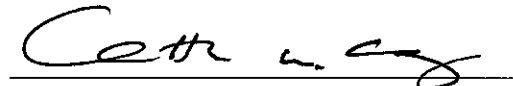
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Dated: May 4, 2006

*Attorneys for Plaintiff  
MedPointe Healthcare Inc.*

**CERTIFICATION PURSUANT TO  
DISTRICT OF DELAWARE LOCAL RULE 7.1.1**

The undersigned hereby certifies that attorneys for the Plaintiff have made reasonable efforts to reach agreement with the opposing attorneys on the matters set forth in this Motion, but agreement could not be reached.

  
Matthew W. King (#4566)

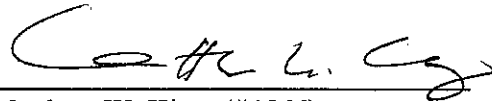
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 4, 2006, I electronically filed the foregoing motion, proposed order, and brief in support thereof with the Clerk of Court using CM/ECF which will send notification of such filing, and hand delivered to the following:

Richard L. Horwitz  
POTTER ANDERSON & CORROON LLP  
Hercules Plaza, 6<sup>th</sup> Floor  
1313 N. Market Street  
Wilmington, DE 19801

I hereby certify that on May 4, 2006, I sent the foregoing motion, proposed order, and brief in support thereof by Federal Express, next business day delivery, to the following non-registered participant:

Robert B. Breisblatt  
WELSH & KATZ, LTD.  
120 South Riverside Plaza, 22<sup>nd</sup> Floor  
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VS.

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Civil Action No. 06-164-SLR

## ORDER

WHEREAS, plaintiff MedPointe Healthcare Inc. ("Plaintiff") has moved this Court for entry of an pursuant to Federal Rules of Civil Procedure 9(b), 12(b)(6) and 12(f), striking defendants Apotex Inc.'s and Apotex Corp.'s (collectively, "Defendants") jury demand, striking Defendants' affirmative defense of unenforceability, dismissing Defendants' counterclaim of unenforceability, and striking Defendants' affirmative defense of misuse; and

WHEREAS, the Court has considered the parties' positions and arguments with respect to the motion, and finds that Plaintiff is entitled to the relief it seeks;

NOW, THEREFORE, IT IS HEREBY ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2006,  
that Plaintiff's motion is GRANTED.

- Defendants' jury demand is hereby STRICKEN.
- Defendants' affirmative defense of unenforceability (D.I. 11, Answer and Counterclaims ¶¶ 31-33) and all other references to unenforceability (namely, the words "and/or unenforceable" in D.I. 11, Answer and Counterclaims ¶¶ 28 and 49 and the word "unenforceable" in Demand for Judgment and Prayer for Relief ¶ a) are hereby STRICKEN.
- Defendants' counterclaim of unenforceability is hereby DISMISSED (D.I. 11, Answer and Counterclaims ¶¶ 58-64).
- Defendants' affirmative defense of misuse (D.I. 11, Answer and Counterclaims ¶ 34) is hereby STRICKEN.

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THE HONORABLE SUE L. ROBINSON  
United States District Judge  
District of Delaware